

defendant. The 2nd applicant adds that he and the defendant are political opponents and the writ has been served on him simply for political purposes and for bringing party differences into the court.

The defence on the other hand states that the 1st applicant is required by the defence to establish the fact that the printers and publishers of the *Utusan Melayu* are unreliable and malicious of the defendant because they had on some other occasions published defamatory statements of the defendant purported to have been uttered by the 1st applicant and subsequently at the request of the 1st applicant the *Utusan Melayu* made the necessary corrections.

As for the 2nd applicant the defence states his evidence is material and relevant to establish the fact that the defamatory words printed and published by the *Utusan Melayu* dated 7th April, 1964 and alleged to have been uttered by the defendant are false and fabricated by the *Utusan Melayu*. Through the 2nd applicant the defence intends to prove that the *Utusan Melayu* on other occasions published various false statements purported to have been uttered by the 2nd applicant regarding the defendant but subsequently the *Utusan Melayu* published denial statements as a result of representations made by the 2nd applicant to the *Utusan Melayu*.

Counsel for the defence submits that these two applications to set aside the writs should be dismissed on two grounds. The first ground is that the applications should not proceed by summons in chambers but should be by motion. In support of this proposition the counsel for the defence cites the case of *Rex v. Hurle-Hobbs, Ex parte Simmons*.⁽¹⁾

The second ground is that from the facts disclosed in the defendant's affidavits the evidence of both the 1st and the 2nd applicants are material and relevant to the defence to establish the defence contention that the defamatory words printed and published by the *Utusan Melayu* dated 7th April, 1964 and alleged to have been uttered by the defendant are false and fabricated by the *Utusan Melayu*.

I am unable to agree with the counsel for the defence on the first objection raised by him because these two applications fall under Order 37 rule 26 of the Supreme Court Rules, and under the heading "Right to subpoena witness" at page 477 of *Mallal's* Supreme Court Practice, it is clearly stated that the application to set aside a subpoena is by summons in chambers.

As to the second objection raised by the defence I think it is necessary first to examine both the statement of claim and the defence. The suit is an action for slander and is based on a publication of the *Utusan Melayu* dated the

A 7th April, 1964. The defence is that the said publication is a falsehood fabricated by the *Utusan Melayu* against the defendant.

In the case of *The King v. Baines & Anor.*⁽²⁾ at 261 Bingham J. states:—

B "I am of opinion that this rule must be made absolute. There can be no doubt as to the jurisdiction of the court to interfere where it is satisfied that its process is being used for indirect or improper objects. It must not be supposed that the position which the applicants occupy affords them any privilege. They stand in the same position as any other of His Majesty's subjects. But the court has to inquire whether its process has been issued against them with the object and expectation on reasonable grounds of obtaining from them evidence which can be relevant."

C It is clear from the record that both the 1st and 2nd applicants were not present on those occasions when the defamatory words were alleged to have been uttered by the defendant and they can therefore, be of no assistance to the defence as to the actual words uttered by the defendant on those occasions. However, both the 1st and the 2nd applicants have had experience of gross misreporting of their own speeches regarding the defendant's character by the *Utusan Melayu* on some other occasions and this piece of evidence, in my view, is indirectly relevant and material to the defence case.

E Both the applications are, therefore, dismissed with costs.

Applications dismissed.

LEE KUAN YEW v. SYED JA'AFAR ALBAR & ORS.

G [O.C.J. (Wee Chong Jin C.J.) September 22, 1967]
[Singapore — Suit Nos. 720 & 721 of 1965]

H *Defamation — Libel — Statements made in course of speeches at public meetings — Publication in newspaper — Statement contained in open letter to foreign newspaper representative with a view to publication — No foundation for allegations — Apology — Withdrawal of imputations — Undertaking to give fullest publicity to — Discontinuation of actions.*

I These two actions for libel were consolidated and came for trial before the Honourable the Chief Justice on September 22, 1967. They were discontinued upon admission by the defendants that "there is no foundation for any of these disgraceful allegations" they had made against the plaintiff, their agreeing to apologise to him, and the 2nd defendants (newspaper publishers) complying with the undertaking contained in the statement by counsel for the plaintiff to publish the terms of the said statements read in open court on the front page in two separate issues of the *Utusan Melayu* not later than September 29, 1967 and upon the defendants jointly and severally paying to the plaintiff his costs of these proceedings.

CONSOLIDATED SUITS.

Desmond Ackner Q.C. and Graham Starforth Hill for the plaintiff.

R. C. Hoffman for the 1st defendant.

Philip Hoalim Jr. for the 2nd and 3rd defendants.

Desmond Ackner Q.C.: May it please your Lordship: My Lord, in this case I appear with my learned friend, Mr. Graham Starforth Hill, for the plaintiff, my learned friend Mr. R. C. Hoffman appears for the defendant, Syed Ja'afar Albar, and my learned friend Mr. Philip Hoalim Jr. appears for Utusan Melayu Press Limited and Melan bin Abdullah, its editor.

My Lord, perhaps I should take the opportunity of immediately apologising for the past and future mispronunciations of which I am likely to be guilty.

My Lord, these proceedings consist of two actions by the Prime Minister Mr. Lee Kuan Yew, as plaintiff for damages for libel against Tan Sri Syed Ja'afar Albar and the Utusan Melayu Press Limited and its editor in respect of statement in two reports published in issues of the *Utusan Melayu* dated respectively 23rd March 1964 and 25th March 1965 (this action being Suit No. 720 of 1965) and against Tan Sri Syed Ja'afar Albar alone in respect of a statement contained in an open letter to Mr. Dennis Bloodworth (this action being Suit No. 721 of 1965). These two actions were consolidated pursuant to an order of court dated 20th March 1967.

The first of the statements complained of was made in the course of a speech delivered by Tan Sri Syed Ja'afar Albar at a public meeting in Kuala Lumpur on 23rd March 1964 and was in substance an allegation that the plaintiff was 'an enemy of Malaysia and an Indonesian agent'. The speech in which this comment was made was subsequently reported in issues of the *Utusan Melayu* of the 24th and 25th March 1964.

The second of the statements complained of was made in the course of a speech delivered by Tan Sri Syed Ja'afar Albar at a public meeting in Besut on 26th March 1965 and contained an allegation that the plaintiff was an agent of the communists and the Djakarta regime who had the evil intention to destroy Malaysia and to pit the Malays and Chinese against each other. This statement was reported in the issue of the *Utusan Melayu* dated the 27th March 1965.

The third and most serious of the statements complained of was contained in an open letter written by Tan Sri Syed Ja'afar Albar to Mr. Dennis Bloodworth, South East Asia representative of the *London Observer*. This letter was written with a view to publication and contained *inter alia* the following words:—

A "As you know the Malays are having a rough time in Singapore and are now being oppressed by the P.A.P. Lee Kuan Yew is continually challenging their national sentiment with provocative statements, yet in spite of all these it was not the Malays who started the riots. The riots were started by agents *provocateur*, who may even be in the pay of Lee Kuan Yew. Lee's intention is to create disorder in Singapore at a time when the Malays are gathering to celebrate the Birthday of Prophet Mohamed, so as to give the impression to the world outside that the Malays are already influenced by Indonesia".

B All the defendants admit that there is no foundation for any of these disgraceful allegations and they are here today by their respective counsel to apologise to the plaintiff for having made them and unreservedly to withdraw all imputations upon him and thus upon the office which he holds. They have in addition agreed to indemnify the plaintiff fully in respect of the whole of his costs of these proceedings.

C The Utusan Melayu Press Limited the publishers of the newspaper concerned, have also undertaken to give the fullest publicity to this apology and withdrawal by publishing in two separate issues of the *Utusan Melayu* circulating in all the areas in which that paper is normally available in a prominent position on the front page of each issue the whole of the text of this statement and of any statements made by counsel for the defendants in court this morning.

E As the plaintiff brought these proceedings for the sole purpose of clearing his name and establishing, as is now admitted, that there is not and never has been any truth in the allegations made against him he is willing to accept the amends now offered by the defendants.

F **R. C. Hoffman:** May it please your Lordship: On behalf of Tan Sri Syed Ja'afar Albar I associate myself with the remarks of counsel for the plaintiff.

G Tan Sri Syed Ja'afar Albar acknowledges that the allegations, particulars of which have already been read by my learned friend, counsel for the plaintiff, are unfounded and he unreservedly withdraws them. He also expresses his sincere regrets to the plaintiff for publishing the statements containing the allegations and he apologises to him for the distress and embarrassment caused to him by such publication.

H **Philip Hoalim Jr.:** May it please your Lordship: On behalf of the Utusan Melayu Press Limited and Melan bin Abdullah I associate myself with what was said by counsel for the plaintiff.

I The Utusan Melayu Press Limited and the editor of the *Utusan Melayu* acknowledge that the allegations, particulars of which have already been read by my learned friend, counsel for the plaintiff, are unfounded and they unreservedly withdraw them. They also express their sincere

regrets to the plaintiff for publishing the statements containing the allegations and they apologise to him for the distress and embarrassment caused to him by such publication.

Desmond Ackner Q.C.: There is an agreed order which has already been signed by the parties. I would respectfully ask your Lordship to initial it, so that it may be put in the court's file. (Order handed to Chief Justice).

Wee Chong Jin C.J.: Perhaps, you could read it, Mr. Ackner.

Desmond Ackner Q.C. (reads): "This consolidated action coming on for trial this day in the presence of counsel for the plaintiff and for the respective defendants and upon reading the pleadings filed herein and upon hearing counsel aforesaid and the statements hereinafter referred to having been read in open court it is ordered that upon the defendants Utusan Melayu Press Limited complying with the undertaking contained in the statement by counsel for the plaintiff to publish the terms of the said statements read in open court on the front page in two separate issues of the *Utusan Melayu* not later than the 29th day of September 1967 and

A upon the defendants jointly and severally paying to the plaintiff his costs of these proceedings as between solicitor and own client to the intent that the whole of the costs and disbursements actually incurred by him shall be met by the defendants such costs to be taxed on an indemnity basis if not agreed all further proceedings in this consolidated action be discontinued and the record be withdrawn."

Wee Chong Jin C.J.: Do you want me to initial this, Mr. Ackner?

Desmond Ackner Q.C.: I would be grateful if your Lordship would.

C **Wee Chong Jin C.J.:** Very well. Then I will make an order in terms of the draft which has been submitted to me. That concludes the whole proceedings.

Desmond Ackner Q.C.: That concludes the whole proceedings.

D *Actions discontinued.*

Solicitors: Rodyk & Davidson; Allen & Gledhill; G. H. Goh & Co.